

1 Steven R. Blackburn, State Bar No. 154797
Leslie J. Mann, State Bar No. 95467
2 Andrew J. Sommer, State Bar No. 192844
EPSTEIN BECKER & GREEN, P.C.
3 One California Street, 26th Floor
San Francisco, California 94111-5427
4 Telephone: 415.398.3500
Facsimile: 415.398.0955
5 SBlackburn@ebglaw.com
LMann@ebglaw.com
6 ASommer@ebglaw.com

7 Attorneys for Defendant
LUCENT TECHNOLOGIES INC.

8
9 **UNITED STATES DISTRICT COURT**
10 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN FRANCISCO DIVISION**
12

13 DEPARTMENT OF FAIR EMPLOYMENT
AND HOUSING, an agency of the State of
14 California,

15 Plaintiff, and

16 STEVEN J. CARAUDDO

17 Plaintiff-Intervenor

18 v.

19 LUCENT TECHNOLOGIES, INC., and
DOES 1 through 20,

20 Defendants.
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CASE NO.: 3:07-cv-03747-PJH

**DECLARATION OF KAREN
UTERMAHLEN IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT OR IN THE
ALTERNATIVE PARTIAL SUMMARY
JUDGMENT**

Hearing Date: November 19, 2008

Time: 9:00 a.m.

Location: Courtroom 3

The Hon. Phyllis J. Hamilton

1 I, Karen Utermahlen, declare as follows:

2 1. I have been employed by Lucent Technologies Inc. ("Lucent" or "the Company")
3 since 1996 as Lucent's Medical Department nurse. I am a registered nurse and have
4 certifications for case management and rehabilitation nursing. I have personal knowledge of all
5 of the facts set forth in this declaration. If called upon as a witness, I could and would
6 competently testify as to the facts set forth below.

7 2. On January 27, 2005, I contacted Mr. Caraudo regarding his injury. I sent him
8 the Lucent's initial letter instructing the employee about their leave of absence and the form to be
9 completed by the physician allowing the employee's medical status to be evaluated and
10 documented for return to work.

11 3. On February 7, 2005, Mr. Caraudo's physician, Dr. Lee informed Lucent that
12 Mr. Caraudo may:

13 **return to work with three weeks of work restrictions of no**
14 **climbing, no reaching above shoulder level, and no lifting over**
20 lbs.

15 A true and correct copy of this note is attached as Exhibit 1. Following Lucent's procedure, I
16 notified Claudine Strange to determine if the needs of the business could accommodate his
17 temporary work restrictions for Mr. Caraudo's return to work. Ms. Strange advised those
18 restrictions could not be accommodated. I then sent Mr. Caraudo another Healthcare Provider's
19 Report for completion at his next office visit.

20 4. In early March, 2005, Dr. Sharma took over Mr. Caraudo's care. He did not
21 change Mr. Caraudo's work restrictions. I spoke with Mr. Caraudo who confirmed that he
22 started physical therapy. In mid-March, I approved an MRI for Mr. Caraudo. I then sent Mr.
23 Caraudo another Healthcare Provider's Report for completion at his next office visit.

24 5. In early April, 2005, I spoke with Mr. Caraudo who advised me that at his last
25 medical visit, Dr. Sharma prescribed chiropractic sessions. I called Mr. Caraudo several times
26 asking him to have his doctor fax his notes explaining the need for the chiropractic sessions. On
27 April 19, Dr. Sharma advised me that the same work restrictions continued through April 25:
28

no climbing, no reaching above shoulder level, and no lifting over 20 lbs.

A true and correct copy of this note is attached as Exhibit 2.

6. On April 19, 2005, I approved the requested chiropractic sessions. I also contacted Ms. Strange to determine if the work restrictions could be accommodated. Ms. Strange reply was negative. I also telephoned Mr. Caraudo to let him know the chiropractic sessions were approved.

7. In early May, 2005, Mr. Caraudo telephoned me requesting additional chiropractic sessions. On May 13, 2005, I received a request from Dr. Sharma asking to extend the chiropractic visits. I approved the extension and requested updated return to work information. I renewed my request on May 26, 2005. I later telephoned Mr. Caraudo regarding his qualified medical exam with Dr. Harrison, an occupational health physician. I also sent him the Healthcare Provider's Report to be completed at his next office visit.

8. On May 25, 2005, Dr. Sharma advised me that he had seen Mr. Caraudo on April 25, May 10, and May 25, 2005. He advised that the same restrictions "no climbing, no reaching above shoulder level, and no lifting over 20 lbs" continued through his next appointment on June 7, 2005. A true and correct copy of this note is attached as Exhibit 3. Mr. Caraudo's chiropractic treatment continued.

9. On June 14, 2005, I scheduled and advised Mr. Caraudo of his functional capacity exam for June 21, 2005. This exam is performed by a physical therapist and determines an employee's physical capabilities. The FCE was performed but the exam results significantly differed from Dr. Sharma's recommendations. The physical therapist reported that Mr. Caraudo could lift 32.5 lbs and pull 95 lbs. Questions were raised about these conclusions.

10. At this time, Mr. Caraudo's care changed to physiatry care with a new physician, Dr. Sachdev. I requested a complete report from the new physician. The physiatrist report stated that Mr. Caraudo could return to a "modified position" but failed to explain that position. If the restrictions are unclear or need explanation, the nurse communicates with the physician to

1 determine the meaning o the restrictions, Dr. Sachdev was contacted but failed to explain the
2 restrictions before he saw Mr. Carauddo on August 3, 2005.

3 11. In late July, 2005, I sent Mr. Carauddo another Healthcare Provider's Report to be
4 completed at his next office visit. After his August 5 visit, my notes reflect, Dr. Sachdev
5 explained the "modified position:"

6 **a sit down job. Able to intermittently site stand walk up to 30**
7 **minutes. No climb, twist, bend stooping or reaching above**
8 **shoulder level. Occasionally able to lift 20 lbs, never lift over**
9 **20 lbs.**

10 I sent an email to Claudine Strange to determine if a sedentary position was available. The
11 response was negative. Mr. Carauddo's chiropractic care was continued. I telephoned Mr.
12 Carauddo to check on his progress. He advised that he was doing bending and stretching
13 exercises.

14 12. In September, 2005, I sent Mr. Carauddo three Healthcare Provider's Reports for
15 completion by his various health care providers. On September 13, I telephoned Mr. Carauddo
16 and reminded him to schedule the appointment with his physician for an evaluation to return to
17 work. Throughout September, I was also in contact with Mr. Carauddo at least seven times to
18 follow up on his medical appointments. In one of these calls, Mr. Carauddo advised me that he
19 tried to go to the gym three times per week and went to the chiropractor once a week. I received
20 another prescription from Dr. Sachdev for chiropractic treatment twice a week for three months.

21 13. On September 27, Lucent sent Mr. Carauddo a letter which explicitly advised him
22 of the date that his disability leave entitlement would expire on January 25, 2006. A true and
23 correct copy of my letter is attached as Exhibit 4.

24 14. In late October, my notes reflect, I received updated work restrictions from Dr.
25 Sachdev as follows:

26 **unable to do repetitive bending, twisting or lifting over 25 lbs.**
27 **Unable to climb ladders, lift cable, lift cabinets, and prolonged**
28 **sitting and standing.**

I advised Mr. Carauddo's department of these work restrictions which responded that they could
not be accommodated.

1 15. In early November, 2005, I called Mr. Caraudo to determine the date of his
2 office visit with his new rehab physiatrist of his choosing, Dr. Kaisler-Meza. On November 18, I
3 telephoned Mr. Caraudo again to discuss his present status and sent him another Healthcare
4 Provider's Report. On November 28, I again telephoned Mr. Caraudo to review his existing
5 work restrictions. I emailed the restrictions to him. I noted that the purpose of the email and
6 discussion was so there would be "hopefully [a] reduction of WR [work restrictions]."

7 16. I later received the Healthcare Provider's Report completed by Dr. Kaisler-Meza
8 on November 29, 2005, which provided:

9 **No lifting or carrying over 10 lbs.**
10 **Limited twisting and bending.**

11 A true and correct copy of this letter is attached as Exhibit 5. On December 7, Dr. Kaisler-Meza
12 completed his Initial Physiatry Consultation Report which I received on December 19, 2005. Dr.
13 Kaisler-Meza prescribed ten chiropractic sessions.

14 17. After Mr. Caraudo's December 20 exam, Dr. Kaisler-Meza continued the same
15 physically limiting work restrictions for Mr. Caraudo:

16 **Lifting not to exceed 10 lbs**
17 **Carrying not to exceed 10 lbs**
18 **Push/pull not exceed 10 lbs**
19 **Bending/Stooping: No repetitive**

20 A true and correct copy of this note is attached as Exhibit 6. These restrictions were in place
21 through January 17, 2006, eight days before his disability leave entitlement would be exhausted.
22 I received these restrictions on January 6 by fax. I immediately contacted Mr. Caraudo's
23 department to see if they could accommodate these restrictions. The department reported back
24 and both Mr. Caraudo's immediate supervisor, Mike Spraggins and the then acting Operations
25 Area Manager, Rod Lilley agreed those restrictions could not be accommodated.

26 18. On January 18, 2006, I telephoned Mr. Caraudo for the outcome of his exam
27 with Dr. Kaisler-Meza. Surprisingly, Mr. Caraudo told me that he was released to full duty
28 return to work. He had never previously said he was ready to return to work. I advised Mr.
Caraudo that due to this sudden change I needed to review Dr. Kaisler-Meza's progress notes
and documentation from his examination. I immediately telephoned Dr. Kaisler-Meza for the

1 explanation. I explained to Dr. Kaisler-Meza's assistant Pakis that I needed to understand Mr.
2 Carauddo's present status of "able to lift push pull occasionally up to 50 lbs" when earlier this
3 month his work restrictions was "not to lift 10 lbs. and unable to bend frequently." No call,
4 however, was received from Dr. Kaisler-Meza. Indeed the sudden change in his physical ability
5 was never explained.

6 19. On January 19, 2006, I contacted Ms. Strange and Ms. Andrechick, Mr.
7 Camacho's assistant, with Mr. Carauddo's new work restrictions clearing Mr. Carauddo to lift 50
8 lbs. I told them that I had called the physician to medically explain the events which transpired
9 to foster his recent physical abilities. I continued to attempt to have Dr. Kaisler-Meza support
10 and explain the new work restrictions. I telephoned his office again on January 20, but received
11 a message that it was closed until January 23.

12 20. On January 23, 2006, two days before Mr. Carauddo's leave expired, I received
13 Dr. Kaisler-Meza's January 17 Healthcare Provider's Report which stated Mr. Carauddo could:

14 **occasionally (1-35%) of his work day lift from 21 – 50 lbs and never lift over 50 lbs.**

15 A true and correct copy of this letter is attached as Exhibit 7. Upon receiving these restrictions,
16 I again telephoned Mr. Carauddo and advised him that I continued to attempt to contact Dr.
17 Kaisler-Meza several times to no avail, but supported medical documentation was needed to
18 justify his significant physical ability. I advised Mr. Carauddo that I could not return him to
19 work without the explanation from his physician.

20 21. I telephoned Mr. Carauddo again the following day and told him I still had not
21 heard from Dr. Kaisler-Meza. I recommended he go to the Dr. Kaisler-Meza's office and request
22 that he contact me. That same day, I faxed and mailed a written request to Dr. Kaisler-Meza for
23 his explanation and enclosed the Occupational Requirements form for Mr. Carauddo. A true and
24 correct copy of my letter is attached as Exhibit 8.

25 22. On January 26, 2006, still no response had been received from Dr. Kaisler-Meza
26 explaining Mr. Carauddo's work restrictions. On January 27, Mr. Carauddo was sent a benefit
27 letter by Fay Farrier to advise him that his disability leave benefit had expired. I received a copy
28 of that letter. A true and correct copy of that letter is attached as Exhibit 9. It explained that he

1 was terminated effective January 25, 2006 under the provisions of the Lucent Technologies Inc.
2 Sickness and Accident Benefit Plan. The letter continued that if Mr. Carauddo or his physician
3 disagreed with the decision, an appeal could be made to the Benefit Claim and Appeal
4 committee.

5 23. On February 3, 2006, I received a report from Dr. Kaisler-Meza. This report
6 stated Mr. Carauddo' lifting capacity was 30 lbs. I contacted Mr. Camacho by email who
7 responded the needs of the business could not accommodate Mr. Carauddo's necessary physical
8 restrictions.

9 I declare under penalty of perjury under the laws of the United States of America that the
10 foregoing is true and correct. Executed in Milford, PA, on October 15, 2008.

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12 /s/ Karen Utermahlen
13 KAREN UTERMAHLEN
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